

APPENDIX -12

**IN THE COURT OF ASSISTANT SESSIONS JUDGE,
SONITPUR, TEZPUR.**

Present: Dr. C. Khanikar, AJS
Assistant Sessions Judge, Sonitpur, Tezpur

(16th November, 2022)

(Sessions Case No 104 / 2021)

(FIR NO.1138/2021 DATED 05-06-2021 / ATTEMPT TO MURDER CASE /AND
TEZPUR POLICE STATION)

COMPLAINANT :	MUSSTT. TARA BHANU
REPRESENTED BY	SMT. NIVA RAHMAN, ADVOCATE ADDITIONAL PUBLIC PROSECUTOR
ACCUSED	MD. ABDUL HASEN S/O LT. ROJOB ALI VILL- BORGHAT P.S.- TEZPUR DIST- SONITPUR, ASSAM
REPRESENTED BY	MR. A. MAHANTA AND SMTI. S. BEGUM, ADVOCATES

APPENDIX -13

Date of Offence	04-06-2021
Date of FIR.	05-06-2021
Date of Charge-sheet	31-10-2021
Date of Framing of Charges	18-01-2022
Date of commencement of evidence	26-05-2022
Date on which judgment is reserved	11-11-2022
Date of the Judgment	16-11-2022
Date of the Sentencing Order, if any	16-11-2022

ACCUSED DETAILS:

Rank of the Accused	Name of Accused	Date of Arrest	Date of Release on Bail	Offences charged with	Whether Acquitted or convicted	Sentence Imposed	Period of Detention undergone during Trial for purpose of Section 428, Cr.P.C.
1	Md. Abdul Hasen	28-10-2021	04-01-2022	341/326 /307 IPC	convicted	For the offence u/s-341 IPC fine of Rs. 200/- i/d S.I for 4 days. For the offence u/s 326 IPC RI for five years with a fine of Rs. 800/-, i/d S.I for 16 days	N/A

**IN THE COURT OF ASSISTANT SESSIONS JUDGE, SONITPUR,
TEZPUR**

SESSIONSCASE No. 104 of 2021

G.R. Case No.1872 of 2021

U/S.341/326/307 of IPC

State of AssamProsecutor

- *Versus*-

Md. Abdul HasenAccused

Present: Dr. Chetana Khanikar, AJS

For the prosecution : Smt. N. Rahman, Addl. P. P.

For the defence : Sri A. Mahanta and Smti. S. Begum,
Advocates

Evidence recorded on: 26-05-2022,21-06-2022, 22-06-2022,
23-06-2022, 24-06-2022, 11-08-2022
& 05-09-2022

Argument heard on : 11-11-2022

Judgment delivered on : 16-11-2022

J U D G M E N T

1. The prosecution case in brief as stated in the FIR is that on 04-06-2021 at about 8.30 a.m, the husband of the informant namely Md. Abdul Basar while going to Borghat center in his bicycle for selling bananas, due to land dispute the accused Abdul Hasan, Safiqul Islam and Rafiqul Islam have stabbed Abdul Basar from his back side with khukuri near the house of Rafiz Aliand caused severe injury. They also took attempt to cause death of Abdul Basar. The injured was admitted first at Kanaklata Civil

Hospital, Tezpur and thereafter at Mission Hospital, Tezpur. The accused again came to the house of the informant with sharp weapon at about 12 noon and chased the children of the informant to kill them.

2. On the basis of aforesaid FIR, police registered a case as Tezpur PS Case No. 1138/2021, u/s 326/307/448/34 IPC. Police investigated the case and on completion of investigation submitted charge-sheet against the accused person Md. Abdul Hasen U/S 341/326/307 of IPC.

3. On appearance of the accused person Md. Abdul Hasen, copies of relevant documents were furnished to him as required U/S 207 of Cr. P. C. and the case was committed to the Court of Hon'ble Sessions Judge, Sonitpur as the case was exclusively triable by the Hon'ble court of Sessions. Thereafter, the case has been transferred to this court. Considering the relevant documents and hearing both the parties and having found sufficient material to presume that the accused had committed offences U/S 341/326/307 of IPC charge under those sections was framed against him. The accused pleaded not guilty and claimed to be tried when the charge was read over and explained to him.

4. During trial the prosecution side has examined eight witnesses and also adduced five documentary evidences.

5. At the close of the prosecution evidence, the accused was examined U/S. 313 of the Cr.P.C. in reference to the incriminating circumstances appearing against him in the prosecution evidences. Defence side has adduced no evidence and plea of the accused is of total denial.

6. After perusing the records, considering the materials produced, hearing the arguments of the learned counsels for both the sides and the accused the following points are taken as POINTS FOR DETERMINATION:

(i) Whether on 04-06-2021, the accused had wrongfully restrained Abdul Basar at the road towards Borghat Center?

(ii) Whether the accused on the same day and place had voluntarily caused grievous hurt to Abdul Basar with dangerous weapon?

(iii) Whether the accused on the same day and place had stabbed on the leg of Abdul Basar with a khukuri with intention or knowledge that under such circumstance, if by that act he had caused the death of Abdul Basar, the accused would have been guilty of murder?

DISCUSSION, DECISION AND REASONS THEREOF:

Point No. (i) and (ii):

7. For convenience of discussion and to avoid unnecessary repetition, points No.(i) and (ii) are taken together for discussion.

8. In this case PW-1 is the informant Musstt. Tara Banu. She deposed that, while her husband Abdul Basar was going to Borghat market by bicycle to sell banana, on the way, the accused Abdul Hasen has stabbed her husband with a khukuri on his leg. As a result, he sustained injury in his leg. The bone of his leg came out from the flesh. The informant was told about the incident by the nearby people.

9. During cross-examination PW.1 has stated that in the FIR, she has mentioned names of 3 persons as accused. She has not seen the incident and that she has not mentioned in the FIR that her husband sustained injury on his leg.

10. PW.2 has deposed that he saw that a person was lying on the road in injured condition with his bicycle. He saw injury on the leg of that person.

11. PW.3 is a hostile witness. He has stated that he has not seen anything and he has denied his statement recorded by police.

12. PW.4 has deposed that he saw that the injured Abdul Basar was lying with profuse bleeding near the Masjid. The injured sustained injuries on his knee and back. Thereafter, P.W 4 was declared as hostile and he denied his statement u/s 161 of Cr.P.C that he has seen that the accused Abdul Hasen stabbed the injured from back side with a khukuri.

13. PW.5 Md. Mofidul Islam has deposed that he saw that the accused along with Rafiqul and Safiqul were assaulting Abdul Basar with a sword on his leg and back. At that time, Abdul Basar was going to market from home. When the accused saw P.W.5, they fled away. Abdul Basar was lying on the road with profuse bleeding and PW.5 took Abdul Basar to Civil hospital and then to Mission hospital.

14. During cross-examination PW.5 has deposed that when he reached the P.O, the injured was lying on the road. The accused filed a case against the father of PW.5. The injured is the uncle of PW.5.

15. PW.6 is the injured Md. Abdul Basar. He deposed that while he was going to Borghat Center with some bananas, on his bicycle and when he reached near the house of Ramiz Ali, the accused Abdul Hasen came from back side and stabbed him with a khukuri on his back. As a result he fell down from the bicycle. The accused also stabbed him on his leg with the khukuri.

16. During cross-examination PW.6 deposed that he does not have any land dispute with the accused, his brother Kasem Ali has land dispute with the accused, which was compromised in a village meeting. A case is pending against Abdul Kasem and Abul Hussain for assaulting accused Abdul Hasen. He also deposed that Ramiz Ali came to the P.O.

17. PW.7 is the M.O, who has examined the injured Abdul Basar in Mission hospital, Tezpur. He stated the history of the injury as alleged history of assault by sharp knife and sustained injuries pertaining to left upper back and bilateral lower limb with profuse bleeding through the wounds. The M.O has stated that the injured has sustained injury on:

(1) left knee laceration with CPN injury, left thigh laceration.

(2) Deep laceration on the left upper back causing scapula fracture and air leak through left lung.

The M.O has opined that the nature of weapon used was sharp and the injury was of grievous nature.

18. During cross-examination the M.O has stated that in his report, it is not mentioned who has brought the injured to the hospital, age of injury is also not mentioned. The injury report was prepared from the hospital register, but the hospital register was not brought to the court and the concerned page of the hospital register was also not enclosed with the report. The photo copy of hospital card is also not enclosed with the report and he has not mentioned the date with his signature in the report. He has also stated that the injury sustained patient may be caused by falling from tree or may be caused by injury from sharp bamboo edges.

19. PW.8 is the I.O. During his examination in chief he deposed that he has visited the P.O. Drew the sketch map, recorded statements of witnesses, arrested the accused and filed the charge-sheet.

20. During cross-examination he deposed that he has not met the injured at the P.O. He has not seized anything in connection to this case. He has not met the injured at hospital. He has examined the injured after the injured was discharged from the hospital, injured has not stated to him that Rafiqul Hussain and Safiqul Islam were also involved with the incident. The injured told him that the injured became senseless immediately after the incident. Mazibur Rahman and Sahjahan Badsa stated before him that they have not seen the accused while stabbing the injured, they have seen the accused fleeing away with the khukuri. He has not recorded the statements of Muslem Uddin and Ali Ahmed, whose houses were situated at the vicinity of the P.O as per the sketch map. The P.O was identified by the informant and local public.

21. Here PW.1 is the informant. Although she stated three names in the FIR as accused, during her evidence she deposed that she has not seen the incident. Thus, she has filed the FIR as she has heard it from someone. But in her evidence she has stated only against the accused Abdul Hasen. She deposed that she has heard the incident from the nearby people. PW.2 has not seen

the incident but he arrived at P.O just after the incident and saw the injured lying on the road. He saw injury on the leg of the injured. PW.3 and PW.4 are two hostile witnesses. They have denied their statements recorded u/s-161 of Cr.P.C. But the I.O as PW.8 has affirmed that PW.3 and 4 have stated before him the statements, he has written u/s-161 of Cr.P.C, which were exhibited by the prosecution side as Ext. P4/PW.8 and Ext. P5/PW.8. Apart from that, during cross-examination by the defence the I.O has stated that PW.3 and PW.4, who were declared as hostile witnesses have stated before him that they have not seen the accused while stabbing the injured, but they have seen the accused fleeing away with the khukuri. Thus, it was brought into light by the defence side that PW.3 and PW.4 have seen the accused person while fleeing away with a khukuri from the P.O. PW.5 has stated that the accused has attacked Abdul Basar, but when PW.5 saw the accused he fled away. When he arrived at the P.O, the injured was lying on the road. The defence side has argued that when PW.5 arrived at the P.O, the injured was lying on the road. This implies that PW.5 has not seen the incident and arrived at the P.O only after the incident. Thus, there is no question of noticing the accused by PW.5. But in my opinion, it is quite possible that PW.5 might see the accused fleeing away and lying the injured on the road with his injury, at the same time. Because both fleeing away and lying on the road are facts occurred just after the incident and this also co-relates the

act of the accused of stabbing the injured. Otherwise why the accused would have flee away from the P.O with khukuri. Thus, the evidence of all the 5 witnesses are corroborative that Abdul Basar was lying on the road with injury. The evidence of PW.3, 4 and 5 are corroborative to the fact that Abdul Basar was lying at the P.O with injury and the accused was fleeing away from the P.O with a khukuri.

22. PW.6 is the injured. He stated that the accused Abdul Hasen stabbed him with khukuri from back side on his back and leg. As a result he fell down and sustained injury. The defence side during argument has submitted that PW.6 is also not an eye witness to say that the accused has caused him the injury, because the injured was attacked from back side and after the injury he became senseless. If it is so, PW.6 became senseless only after the incident, but not prior to the incident or during the incident. In broad day light PW.6 was attacked by the accused. The accused is well known to him. Although from backside, PW.6 obviously had scope at the time of causing the injury to indentify the accused, even though he has not noticed the accused prior to the attack, as it was from backside.

23. PW.7 is the M/O. He has supported the prosecution case. He stated the alleged history of injury as assault by sharp weapon. He has stated about the injury at leg and back and opined that the injury was of grievous nature and caused by sharp weapon. Although, the

defence side, during cross-examination, has brought the facts to notice that the hospital register was not taken to Court or not enclosed with the report, the age of injury is not mentioned, it is not mentioned, who has taken the injured to the hospital, the photocopy of hospital card is not enclosed with the report, etc., the report of the M.O regarding the injury is corroborated with the evidence of other witnesses. The M.O himself has examined the injured. So he has also personal knowledge about the injury of the injured irrespective of the documents like hospital register, Hospital card etc. Thus, in my opinion, the injury is sufficiently proved and it is also proved that the injury was caused by sharp weapon. Although it was suggested that the injury may be sustained by falling from tree or may be caused by injury from sharp bamboo edges, this is merely a suggestion. No evidence of probable circumstance to that effect is found. Nothing is found in the evidence of the I.O which is contradictory to the prosecution story. The defence side has pointed out that I.O has not seized anything in connection to this case, the I.O has not recorded the evidence or statements of some persons whose houses are situated near the P.O, as per the sketch map and has not shown any explanation for not recording their statements. However, in my opinion, non seizure of material objects or non examining some of the persons whose houses are situated near the P.O, will not make the prosecution story totally false, where there are other circumstantial and as well as direct evidences,

which indicates the guilt of the accused only. Here, the prosecution side by adducing sufficient direct, circumstantial and corroborative evidences has proved the injury of the victim Abdul Basar. It is also proved that the accused Abdul Hasen just after the incident has fled away from the P.O with a sharp weapon/khukuri. **No other circumstance appeared from the materials available as to how Abdul Basar sustained injury or why Abdul Hasen has fled away from the P.O with the khukuri, if Abdul Hasen has not caused the injury to Abdul Basar.**

24. Defence side has explained some facts about previous enmity between the parties by showing the fact of land dispute between the accused and the brother of the injured. It is found that a case was filed by the accused prior to filing of this case against the brother of the injured, who is also the father of PW.5. However, mere land dispute or previous enmity is not sufficient to hold a case to be false, where there is sufficient evidence to prove the case. The injury of the victim is proved by evidence of all the witnesses. It is also proved that the accused fled away from the P.O after the incident with a weapon.

25. In view of the above observations, I am of the opinion that the prosecution side has proved beyond reasonable doubt that the accused Abdul Hasen has attacked Abdul Basar on the road, while he was going to

Borghat Center from backside with a sharp weapon/khukuri for which Abdul Basar fell down on the road. Thus, I hold that it is proved beyond reasonable doubt that **on 04-06-2021, the accused has wrongfully restrained Abdul Basar at the road towards Borghat Center and voluntarily caused grievous hurt to Abdul Basar with dangerous weapon.**

Hence point no. (i) and (ii) are decided **affirmative.**

Point No. (iii): *Whether the accused on the same day and place had stabbed on the leg of Abdul Basar with a khukuri with intention or knowledge that under such circumstance, if by that act he had caused the death of Abdul Basar, the accused would have been guilty of murder?*

26. To constitute an offence u/s-307 of IPC, the offender must do an act which would have caused death of the victim in its ordinary course and that act must be done by the accused:

- (i) with an intention to cause death
- (ii) the said act must be done with the knowledge that the act is likely to cause death
- (ii) There should be an intention to cause such bodily injury i.e likely to cause death.

But in this case no witness has stated anything regarding the intention of the accused to kill Abdul Basar.

27. The Hon'ble Gauhati High Court in the decision of the case *Md. Hazarat Ali @ Md. Harzat Ali vs. State of Assam 2017(170) AIC 615: 2017 CriLJ 914: 2017(2) Crimes 309:2017(2) NEJ 194*, has held that,

"...in order to amount to an attempt to murder, the attempt must be of such that if not prevented or intercepted it would be sufficient to cause death of the victim. In order that a person may be guilty of an attempt to murder, the following two ingredients must be present (a) an intention or knowledge for committing murder (b) the doing of an act towards it. For the purpose of Section 307 IPC what is material is the intention or knowledge, nor the consequences of the actual act done for the purpose of carrying out the intention."

In the case in hand, nothing is found what has prevented the accused to kill Abdul Basar. If the accused had any intention to cause death of Abdul Basar, he could have kill Abdul Basar. Thus, it does not appear to me that the accused had any intention to cause death of Abdul Basar.

28. To hold a person guilty u/s- 307 of IPC, the offence against him is to be proved strictly likely an offence u/s-307 of IPC. But in this case no evidence regarding any intention of the accused to kill Abdul Basar is found. In fact no case u/s-307 IPC is found against the accused Abdul Hasen. Hence, I hold that the prosecution side has failed to prove that the accused had stabbed on the leg of Abdul Basar with a khukuri with intention or knowledge that under such circumstance, if by that act he had caused the death of Abdul Basar, the accused would have been guilty of murder.

Hence point no. (iii) is decided **negative**.

29. From the above discussions I came to the conclusion that the prosecution has established beyond reasonable doubt the fact of wrongfully restraining Abdul Basar by the accused on the road towards Borghat Centre and the fact of voluntarily grievous causing hurt to the Abul Basar by the accused with dangerous weapon. But, it is not proved that the accused had stabbed on the leg of Abdul Basar with a khukuri with intention or knowledge that under such circumstance, if by that act he had caused the death of Abdul Basar, the accused would have been guilty of murder. As such **I hold the accused Md. Abdul Hasen guilty U/S 341/326 of IPC.**

30. In the interest of justice and considering the nature of the offence, I decided **not to release the accused person on probation of good conduct** as it will encourage occurrence of this type of offence in the society and faith of the people on justice delivery system will be decreased by such release. Also, there exists every possibility that the accused will commit offence of the same type without any hesitation if he is so released without allowing him to suffer the consequences of his act.

SENTENCE HEARING:

31. The accused was heard on the question of sentence. Considering his statements, facts and circumstances of the case, the age of the victim, I decided to deal with the matter of sentence in a lenient way. **For the offence u/s 341 of IPC the accused Md. Abdul Hasen is**

sentenced with a fine of Rs. 200/-, in default S.I for 4 days. For the offence u/s 326 of IPC the accused Md. Abdul Hasen is sentenced to rigorous imprisonment for five years with a fine of Rs. 800/-, in default S.I for 16 days.

32. As per provision of **section 428 of Cr.P.C.** the period of detention already undergone by the accused during investigation, inquiry and trial of the case be **set off** against the sentence of imprisonment.

33. The **fine**, after realization, be **given to the injured** Md. Abdul Basar.

34. Let the **free certified copy of the judgment be furnished to the accused Md. Abdul Hasen.**

Given under my hand and the seal of this Court on this 16th day of November, 2022.

(**C. Khanikar**)
Asstt. Sessions Judge,
Sonitpur, Tezpur

APPENDIX -14
LIST OF PROSECUTION / DEFENCE / COURT WITNESSES

A. Prosecution:

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
PW: 1	Musstt. Tara Banu	informant
PW: 2	Md. Ramish Ali	Other witness
PW:3	Md. Majibur Rahman	Other witness

PW:4	Md. Sahjahan Badsa	Other witness
PW:5	Md. Mofidul Islam	Other witness
PW:6	Md. Abdul Basar	Victim
PW:7	Dr. Ruth Chonzik	M.O
PW:8	SI Bhargav Borbora	I.O

B. Defence Witnesses, if any :

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
NIL	NIL	NIL

C. Court Witnesses, if any :

RANK	NAME	NATURE OF EVIDENCE (EYE WITNESS, POLICE WITNESS, EXPERT WITNESS, MEDICAL WITNESS, PANCH WITNESS, OTHER WITNESS)
NIL	NIL	NIL

LIST OF PROSECUTION/ DEFENCE/ COURT EXHIBITS

A. Prosecution:

Sr. No	Exhibit Number	Description
1.	Ext.P1/PW.1	FIR
2.	Ext.P2/PW.7	Medical Report
3.	Ext.P3/PW.8	Sketch Map
4.	Ext.P4/PW.8	Charge-Sheet

B. Defence:

Sr. No	Exhibit Number	Description
NIL	NIL	NIL

C. Court Exhibits:

Sr. No	Exhibit Number	Description
NIL	NIL	NIL

D. Material Objects:

Sr. No	Exhibit Number	Description
NIL	NIL	NIL

(C. Khanikar)
Asstt. Sessions Judge,
Sonitpur, Tezpur